

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

DIANE JOHNSON AND
ANDRE JOHNSON,

Plaintiffs,

v.

DEKALB COUNTY, GEORGIA,
OFFICER DERON FULTON, in
his individual capacity and
OFFICER JOHN BOWE, in
his individual capacity,

Defendants.

CIVIL ACTION FILE
NO. 1:17:CV-02601-TWT

NOTICE OF APPEAL

COME NOW, **OFFICER DERON FULTON**, and **OFFICER JOHN BOWE** in their individual capacities (collectively "Defendants"), by and through their undersigned counsel, and file this Notice of Appeal.

NOTICE OF APPEAL

Notice is hereby given that Defendants appeal to the United States Court of Appeals for the Eleventh Circuit from the Order entered on June 7, 2019, denying them qualified immunity with respect to the federal law claims asserted against them

and official immunity under the Georgia Constitution with respect to the state law claims asserted against them. (Doc. 59).

In support of their Motion for Summary Judgment, Defendants contend that they are entitled to qualified immunity as to Plaintiffs' constitutional claims brought pursuant to 42 U.S.C. § 1983 and official immunity under the Georgia Constitution as to Plaintiffs' state law claims. But in its Order, entered on June 7, 2019, the District Court denied Defendants' Motion for Summary Judgment on Plaintiffs' § 1983 claims and held that Defendants are not entitled to qualified immunity. (Doc. 59). The District Court likewise denied Defendants' Motion for Summary Judgment on Plaintiffs' state law claims and held that they are not entitled to official immunity pursuant to Article I, Section 2, Paragraph 9 of the Georgia Constitution. (Doc. 59).

The Eleventh Circuit has jurisdiction to review the District Court's denial of qualified immunity under 28 U.S.C. § 1291. *Plumhoff v. Rickard*, 572 U.S. 765, 771–73 (2014) (holding denial of qualified immunity at summary judgment is properly appealed under 28 U.S.C. § 1291); *see Stanley v. City of Dalton*, 219 F.3d 1280, 1286–87 (11th Cir. 2000). The denial of official immunity is likewise subject to immediate, interlocutory appeal. *See Bailey v. Wheeler*, 843 F.3d 473, 480 (11th Cir. 2016) ("We have jurisdiction to review Wheeler's interlocutory appeal of the district court's denial of qualified immunity and official immunity."); *see also Black*

v. Wigginton, 811 F.3d 1259, 1265 (11th Cir. 2015) (reviewing on interlocutory appeal the assertion of official immunity under Georgia law in conjunction with qualified immunity).

Respectfully submitted this 3rd day of July, 2019.

HALL BOOTH SMITH, P.C.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day electronically filed the foregoing **NOTICE OF APPEAL** with the Court using the CM/ECF System. Notice of this filing will be sent to all parties indicated on the electronic filing receipt.

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This 3rd day of July, 2019.

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